

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 99-0376
CORPORATE INCOME TAX
FOR TAX PERIODS: 1995-1997

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Issue

1. Adjusted Gross Income Tax-Net Operating Loss

Authority: 26 U.S.C.A. 172, IC 6-3- 2-2.6.

The taxpayer protests the Indiana Department of Revenue treatment of the net operating loss.

Statement of Facts

The taxpayer is a manufacturer of doors. After an audit for the tax period 1995-1997, the taxpayer was assessed additional adjusted gross income tax. The taxpayer timely protested Audit's treatment of the net operating losses and a hearing was subsequently held. Further facts will be provided as necessary.

1. Adjusted Gross Income Tax- Net Operating Loss

Discussion

During calendar years 1988 and 1989, the taxpayer incurred net operating losses ("NOLs") of \$374,350 and \$340,434 respectively. These NOLs were carried back to offset income earned in 1986 and carried forward to offset income earned in 1990. The taxpayer contends the remaining NOLs for 1988 and 1989 should have been carried forward to offset income earned in 1997. Audit, however, has determined that if the taxpayer had properly applied these NOLs to offset prior year's income, then the NOLs would have been exhausted by 1992. The taxpayer now protests Audit's conclusions.

The taxpayer now asks the Department for permission to carry forward its remaining 1988 and 1989 NOLs to offset income earned in 1997.

Indiana treatment of net operating losses is governed by the provisions of the federal law concerning corporate net operating losses. IC 6-3-2-2.6. The carry back and carry forward provisions of the federal law are found at 26 USCA Sec. 172. These provisions require that any corporate net operating loss must first be carried back three years before the loss can be carried forward, unless the taxpayer has elected to forego the three year carry back.

For the years at issue, any eligible loss not applied in the three preceding years may be carried forward up to fifteen years. 26 USCA Sec. 172 (b) (1) (A) (ii). However, such losses "shall be carried to the earliest of the taxable years to which. . . such loss may be carried." 26 USCA Sec. 172 (b) (2).

The taxpayer failed to apply its NOLs to the earliest eligible tax years. The taxpayer should have applied its 1988 and 1989 NOLs to offset income earned in 1990 and 1992. Had the taxpayer properly applied these NOLs, the taxpayer would not have had any remaining NOLs from 1988 and 1989 to utilize in 1997. The taxpayer, therefore may not carry forward its unused 1988 and 1989 NOLs to offset income earned in 1997.

Finding

Taxpayer's protest is denied.